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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,710	02/20/2004	Koji Sakuta	TAKIT-144-D2	4197

23599 7590 01/24/2006

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EXAMINER	
LEWIS, AMY A	
ART UNIT	**PAPER NUMBER**
1614	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/781,710	SAKUTA, KOJI	
	Examiner	Art Unit	
	Amy A. Lewis	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *8-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *8-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Status of the Case

The Amendments and Remarks, filed 18 October 2005, have been entered into the application. Accordingly, claims 13 has been amended, claims 16-23 have been added, and claims 1-7 have been cancelled.

Claims 8-23, as filed 18 October 2005, are presented for examination.

Response to Applicant's Arguments, filed 18 October 2005:

1) Claims 8-15 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-11, 13, 15, and 18-20 of copending Application No. 10/180072. This rejection is *maintained* for the reasons of record and further below.

The requirement for restriction in Application No. 10/180072 has been vacated.

Applicant notes that Application No. 10/180072 has been allowed. In response, the Examiner would like to note that the Notice of Allowance and any prior indication of allowable subject matter regarding Application No. 10/180072 has been withdrawn (see the Office Action mailed 6 January 2006).

2) Rejection of claims 8, 11-13 under 35 U.S.C. 103(a) as being unpatentable over Powell et al. 6,060,546 and further in view of Tachibana et al., 5,412,004, has been *withdrawn* in favor of the new grounds of rejection, set forth below.

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2) Claims 9-11, 13 and 15-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakuta K (EP 0 501 791 A2), in view of Yu et al. (US Patent No. 4,252,796).

Sakuta K (EP 0 501 791 A2) and Lin Z et al. (US Patent No. 5,948,855) are applied as above in the rejection of claims 9-11 and 16-28.

Sakuta (EP 0 501 791 A2) teaches a silicone polymer, of formulas (1) and (2) capable of being swollen with silicone oils to give a uniform, pasty composition without the use of any surface active agent, for use as a cosmetic or a medicine (see abstract). Formulas (1) and (2) are the same formulas of instant claim 14. Sakuta teaches the instantly claimed organohydrogenpolysiloxanes, polyoxyalklenes, and

organopolysiloxanes at the same viscosity of 100 mm^2/s at 25° C (which is equal to 100 centistokes).

Sakuta teaches that the organohydrogenpolysiloxanes, polyoxyalklenes and/or organopolysiloxanes can be subject to polymerization (p. 4, lines 43-50). And for such polymerization, organic solvents may also be used. Sakuta teaches the preferred solvents are aliphatic alcohols, including ethanol, which is the preferred "lower alcohol" according the instant invention (see specification at p. 7).

Sakuta does not teach the inclusion of aluminum in the composition.

Yu et al. teach that aluminum compounds increase the stability of topical emulsion compositions. These water-in-oil emulsions are useful as vehicles for cosmetics and therapeutic compositions to be topically applied (abstract). The reference teaches the specific aluminum compounds aluminum zirconium and aluminum chlorohydroxide (also known as aluminum chlorohydrate), of instant claim 11. The reference also teaches a concentration range of the aluminum compound of from 5-10% of the total composition (col. 4, lines 62-65), which overlaps the ranges of the instantly claimed composition. (See: abstract; col. 2, line 58 -- col. 3, line 4; col. 4, lines 47-65; claim 1).

Yu et al. do not teach the particular silicone composition of Formulas (1) and (2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include aluminum compounds in the silicone polymer composition of Sakuta. The skilled artisan would have been motivated to include aluminum compounds to form a more stable topical emulsion compositions for

pharmaceuticals and cosmetics, as taught by Yu et al. The person of ordinary skill in the art would have had a reasonable expectation of success in creating said composition having been taught by Yu et al. that such emulsions are more stable. Therefore, the invention as a whole would have been prima facie obvious.

Conclusion

Claims 8-23 are rejected. No claims are allowed.

This action is made NON-FINAL due to the new grounds of rejection.

Contact Information:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy A. Lewis whose telephone number is (571) 272-2765. The examiner can normally be reached on Monday-Friday, 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571) 272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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